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IN THE

SUPREME COURT OF THE UNITED STATES

NO. 81-5044

RONALD MONROE,
Petitioner

VS.

STATE OF LOUISIANA,
Respondent

RESPONSE IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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STATEMENT OF THE CASE

The petitioner, Ronald Monroe, has been convicted of first degree murder, a violation of Louisiana Revised Statute 14:30, and sentenced to death pursuant to Louisiana's capital sentencing procedure as set out in the Louisiana Code of Criminal Procedure, Article 905 et seq.

An earlier trial which also resulted in the death penalty was reversed by the Louisiana Supreme Court on grounds irrelevant to the instant petition.

STATEMENT OF FACTS

Mrs. Lenora Collins and her two children lived in one half of a duplex. Ronald Monroe and his family lived in the other half. Mrs. Collins' mother bought the house and informed the Monroe family that they would have to move out because she wanted to move into the house to be near her daughter and grandchildren. On September 10, 1977, Ronald Monroe broke

into Mrs. Collins' half of the house. Armed with a butcher knife, Monroe exacted his revenge for the eviction by stabbing Mrs. Collins repeatedly. Monroe inflicted three eight inch knife wounds on Mrs. Collins. One of the wounds was afflicted with such force that it completely severed a rib. The victim lost at least two quarts of blood which was splattered all over the house. Mrs. Collins' two children saw their mother brutally assaulted and then were attacked themselves. One of the children managed to escape, the other was stabbed in the back before she was able to lock herself in the bathroom. Hearing her mother call for her, the victim's daughter came out of the bathroom in time to see her mother reach for the telephone only to fall dead. The victim's son, who had run outside, saw Monroe come out of the Collins residence exaulting in his triumph saying "I got her. I got her."

ARGUMENT

I

After finding Ronald Monroe guilty of first degree murder, the jury returned a recommendation that he receive the death penalty. The jury based its recommendation upon a finding that there existed three of the aggravating circumstances listed in Louisiana Code of Criminal Procedure Article 905.4:

> "(a) The offender was engaged in the perpetration or attempted perpetration of aggravated rape, aggravated kidnapping, aggravated burglary, or armed robbery;
>
> "* * * *
>
> "(d) The offender knowingly created a risk of death or great bodily harm to

more than one person;

"* * * *

"(g) The offense was committed in an especially heinous, atrocious or cruel manner."

The Louisiana Supreme Court determined on appeal that the first two aggravating circumstances were properly found by the jury. As to the third, however, the court, relying on its own jurisprudence, found that the third aggravating circumstance was not present. After conceding that the killing was brutal, the court stated:

> "Nonetheless, in order for a murder to be 'especially heinous,' there must exist evidence that there was 'torture or the pitiless infliction of unnecessary pain on the victim.' State v. English, 367 So.2d 815, 823 (La. 1979). . . . While there is some evidence in this case that the offense was heinous and cruel, it was not proved beyond a reasonable doubt that the instant offense was <u>especially</u> heinous." (Emphasis in original).

The Louisiana Supreme Court went on to disregard <u>Stephens v. Zant</u>, 631 F.2d 397 (5th Cir. 1980), and to hold that where two of three aggravating circumstances found by the jury were upheld on appeal, the death penalty need not be reversed. Petitioner maintains that that holding is erroneous.

Petitioner argues that Stephens v. Zant requires that where one aggravating circumstance is erroneously found, the death penalty can not stand. Certiorari having been granted in that case (Zant v. Stephens, No. 81-89), it cannot be stated with certainty what the abiding rule of law emerging from that case will be until this Honorable Court has ruled.

Stephens was convicted of murder and sentenced to death. After his conviction and sentence were affirmed on appeal to the Supreme Court of Georgia, he sought federal habeas corpus relief. The United States District Court for the Middle District of Georgia denied him relief, prompting his appeal to the United States Court of Appeals for the Fifth Circuit.

Among the aggravating circumstances found by the jury in returning the death penalty was "the offense was committed by one having a substantial history of serious assaultive criminal convictions." Subsequent to petitioner's conviction, that aggravating circumstance was ruled to be unconstitutionally vague. Arnold v. State, 236 Ga. 534, 224 S.E.2d 386 (1976).

Relying upon a series of cases commencing with Stromberg v. California, 283 U.S. 359, 51 S.Ct. 532, 85 L.Ed. 1117 (1931), the Fifth Circuit held that because it was impossible to determine whether or not the jury relied upon the unconstitutional aggravating circumstance in returning the death penalty, the penalty could not stand. In Stromberg, a young woman was convicted under a statute parts of which were patently offensive under the First Amendment. Although one of the alternative theories of guilt under that statute was constitutional, this Honorable Court found that because the judge returned a

general verdict which did not indicate which theory of guilt he relied upon, the conviction could not stand.

Similarly, the Fifth Circuit found that because it could not determine the extent to which the jury relied upon the unconstitutional aggravating circumstance, the penalty could not stand.

In the instant case, however, the Louisiana Supreme Court did not find the aggravating circumstance it rejected to be unconstitutional. Instead, the court determined that under the applicable jurisprudence, the facts of the case did not support a factual determination that the crime was committed in an "especially heinous or atrocious manner."[1/]

The Louisiana Supreme Court, torn between the conflicting opinions of the highest court of the State of Georgia and an intermediate federal court, chose to adopt as persuasive the opinion of the Georgia Supreme Court and reject Stephens v. Zant. Most importantly, the Louisiana Court noted no extraneous facts were brought before the jury determining Stephens' sentence even though the offensive aggravating circumstance was considered:

> ". . . under George law, in capital cases, a defendant's criminal record is before the jury for its consideration regardless of whether it arguably evidences a 'substantial history of

1/ In recognition of the inevitable confusion brought about the macabre and lamentable legal niceties distinguishing especially heinous murders from those of only ordinary heinousness, the Louisiana Supreme Court has recently fashioned a rule requiring instructions to the jury to the effect that torture or the pitiless infliction of unnecessary pain upon the victim is necessary for a finding of the existence of the aggravating circumstance. State v. Sonnier, No. 80-K-1846, (La. June 22, 1981).

serious assaultive criminal convictions.' See Ga. CodeAnn. §27-2503 (a). Thus, the jury would have been apprised of, and could have legally considered, Stephens' criminal record in any event."

In the instant case, where the aggravating circumstance discarded on appeal was drawn solely from the facts of the case, it is clear that no external or arbitrary elements were brought into the jury's consideration. The jury was well aware of the brutal and callous manner by which petitioner murdered Mrs. Collins and had every right to consider the facts of the case when determining whether or not to be merciful.[2/]

Stromberg and its progeny, Bachellar v. Maryland, 397 U.S. 564, 90 S.Ct. 1312, 25 L.Ed.2d 570 (1970); Street v. New York, 394 U.S. 576, 89 S.Ct. 1354, L.Ed.2d 572 (1969); Yates v. United States, 354 U.S. 298, 77 S.Ct. 1064, 1 L.Ed.2d 1356 (1957); relied on heavily by the Fifth Circuit in Stephens v. Zant, show a marked similarity in that they all stress two factors:

2/ Of course, it has been the position of the State of Louisiana throughout the various stages of this litigation that even under the Louisiana court's unnecessarily restrictive rule in State v. English, that this crime was especially heinous, atrocious and cruel. It is regrettable that the Louisiana Supreme Court's overreaction to dicta in Proffitt v. Florida, 428 U.S. 242, 96 S.Ct. 2960, 49 L.Ed.2d 913 (1976) and Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1968), has resulted in a rule of law that says that only the most unspeakable horrors fall into the category of especially atrocious, etc.

That the Louisiana Supreme Court is way off the mark is made all the more clear by this Honorable Court's comments in a footnote in Proffitt v. Florida, the font of the Louisiana court's purported revelation about conscienceless or pitiless infliction of pain. In that footnote (Fn. 12, 96 S.Ct. at 2968), this Honorable Court approved findings of the existence of a substantially identical aggravating circumstance where the crime was positively genteel in comparison to Ronald Monroe's totally merciless slaughter of Mrs. Collins.

1) At least one alternate theory of guilt under a statute was patently unconstitutional; and

2) The verdict was of the type that it cannot be determined upon what theory of guilt the verdict was based.

The distinctions between the Stromberg strain and cases involving aggravating circumstances, and this case in particular, are clear.

The Louisiana Supreme Court did not reject the heinousness aggravating circumstance because of any constitutional infirmity. It found that it was inapplicable because of technical niceties of the Court's own construction. There also is no difficulty in determining what the death penalty recommendation was based upon in that the jury returned a written holding indicating which aggravating circumstance it had found. It is quite clear that the jury knew exactly what it was doing in recommending the death penalty and was not misled by an a aberrant aggravating circumstance.

II

Petitioner maintains that his conviction should have been reversed by the Louisiana Supreme Court on the grounds that the trial court erred in denying a mistrial and sentencing him to life imprisonment when the jury returned to declare that it had not been able to reach a decision.

After only forty-five minutes, a very short period of deliberation, the jury returned to the courtroom. The fore-

man announced that there was some difficulty in reaching a decision. Although the foreman characterized the problem as a "hung jury," the judge determined that there had not been sufficient time spent in deliberation, charged the jury as to the consequences of a hung jury and sent them back to the jury room. Petitioner argues that by informing the jurors of the effect of deadlock and allowing further deliberations, the trial judge implied that he wanted the jurors to impose the death penalty.

As the record clearly indicates, this allegation is meritless. As the exchange between the jury foreman and the judge demonstrates, the judge did not more than exercise his discretion in determining that the claim that the jury was hung was more the result of incomplete deliberation than true impasse. The judge's comment in no way impressed upon the jury the need to return any particular verdict:

> BY THE FOREMAN:
>
> Your Honor, we have a hung jury, we cannot make a determination about the sentence in this case.
>
> BY THE COURT:
>
> Well, I was given to understand by the Sheriff that you wanted more instructions. Additional instructions, is that correct or not?
>
> BY THE FOREMAN:
>
> He asked me to come down and explain that to you.
>
> BY THE COURT:
>
> That is what he explained to me. But what I am asking you--you told me you can't agree.

BY THE FOREMAN:

Correct sir.

BY THE COURT:

Okay. And he told me that. Now we are finished with that. Now, I am asking you is it correct as the Sheriff indicated to me, that in addition to not agreeing you now require more instructions.

BY THE FOREMAN:

Correct sir.

BY THE COURT:

On what?

BY THE FOREMAN:

On the procedure to follow in the event we cannot all unanimously on one or the other decision. We cannot agree on death or life imprisonment.

BY MR. LAWRENCE:

Your Honor, I think the law is quite clear on that point. I think that the jury has indicated they are hung and that's it.

BY THE COURT:

Well, Mr. Lawrence, you forget one important point. That the court and only the court makes the determination as to whether a sufficient time has elapsed to understand if they are hung or not.

BY MR. LAWRENCE:

I don't believe that's the case your Honor. I believe that the law says if they cannot decide the . . .

BY THE COURT:

After a reasonable time. Now, the words, "after a reasonable time" are not expressly put in this statute, but it is a matter of common sense it seems to me, that it is implicit in the concept. Let us take a ridiculous example for purpose of illustration, suppose they came back after being up there five minutes and say, "We can't agree".

BY MR. LAWRENCE:

Then the court is suppose to follow what the Code says.

BY THE COURT:

Alright, that's your version. I entirely disagree because I think in deference to you it is ludicrous. Do I understand that you want--you said you wanted further instructions. Now let me get my mind back on this trend of thought, since there was a necessary interruption. And instead of my trying to paraphrase it, would you please tell me again, specifically, what seems to be the problem, or what instructions further, on what point, do you want?

BY THE FOREMAN:

We are divided right now in our decision making. From the evidence of discussion upstairs, I don't believe from the discussion we had that we are going to be able to get off dead center, because each one of us feel strongly about our particular posture right now. With that in mind, I felt like I had to ask you how we should approach the problem.

BY THE COURT:

Well, the law is this. As I understand it, and for present purposes, I am the law. As I understand it to render a verdict of death penalty, the penalty of death, the jury must agree unanimously. To render a sentence recommendation of life imprisonment, the jury must likewise agree unanimously. However, if the jury cannot agree, then the court must impose a sentence of life imprisonment without the benefit of probation, parole or suspension of sentence. Is that clear to all of you? (Jurors responded affirmatively.) However, I think, contrary to defense counsel, that implicit, in herent, necessarily so, in the interpretation of that law, since it is not spelled out in that statute, that the court must be convinced in its own mind, that the jury has had a sufficient time to conjugate [sic] on this serious matter. And my judgment at the moment is, in view of the fact that you've been out relatively a short time, that I don't think that you have had at this juncture sufficient time to give it a representative trial, representative run. Along with that I see the sandwiches are here, the lunch, so suppose you all go back, have your eats, and discuss it further and then if you are of the same mind, you can inform me, or if it is the other way, you can inform me whatever the case--whatever the situation is. And I don't want of necessity to set any arbitrary time limits now, that gets to be a ticklish situa-

tion, because it could be construed one way or the other. So a reasonable time is as much as I am going to say. The court will be in recess. (Trial Transcript, pp. 263-266).

It is abundantly clear that the trial judge cautiously and judiciously exercised his discretion in rejecting the foreman's premature and inaccurate representation that the jury was hung.

This allegation is meritless.

CONCLUSION

I

The Louisiana Supreme Court properly rejected the incorrect holding of the Fifth Circuit in Stephens v. Zant in favor of the more accurate opinion of the Georgia Supreme Court in holding that appellate rejection of one of three aggravating circumstances does not mandate reversal of the death penalty.

II

Petitioner incorrectly characterizes the trial court's actions when the jury informed the court that it was deadlocked quite soon after deliberations began. The record clearly indicates that the judge did not improperly influence the jury's deliberations.

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CERTIFICATE

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